

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD CARBONE and EILEEN KELLY-CARBONE,

07-CV-8741 (MM)

"ECF CASE"

COMPLAINT

Plaintiffs,

-against-

**TRIAL BY
JURY DEMANDED**

NEW MILFORD HOSPITAL and JOHN MULLEN, M.D.,

Defendants.

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PLAINTIFFS, by their attorney, ROBERT G. SPEVACK, ESQ., as and for their Verified Complaint, states as follows:

1. At all times hereinafter mentioned, plaintiffs were and still are residents of the County of Dutchess, State of New York.
2. At all times hereinafter mentioned, defendant NEW MILFORD HOSPITAL was and still is a resident of the State of Connecticut.
3. At all times hereinafter mentioned, defendant JOHN MULLEN, M.D. was and still is a resident of the State of Connecticut.
4. Pursuant to 28 USC 1332, this Court has subject matter jurisdiction over the parties and claims asserted herein because the plaintiffs are each diverse from defendant. The amount in controversy exceeds \$75,000, exclusive of interest and costs.
5. At all times hereinafter mentioned, defendant JOHN MULLEN, M.D. was and still is a physician duly licensed to practice medicine and undertook to treat the plaintiff herein.

6. On or about December 28, 2006, plaintiff RICHARD CARBONE was a patient of the defendant NEW MILFORD HOSPITAL.

7. On or about December 28, 2006, plaintiff RICHARD CARBONE was a patient of the defendant JOHN MULLEN, M.D.

8. On or about the aforesaid date, defendant JOHN MULLEN, M.D. performed a medical procedure on the plaintiff herein known as a rotator cuff surgery of plaintiff's right shoulder.

9. Defendants, their agents and/or servants performed the medical procedure in an improper manner causing injury to plaintiff including, but not limited to, causing a portion of the operative blade to break off and become embedded in plaintiff's right shoulder during the course of the procedure.

10. The aforesaid injury to plaintiff was caused due to the negligence of the defendants herein and has damaged plaintiff.

11. As a result of the aforesaid, plaintiff has been damaged in the sum of \$1,000,000.00.

AS AND FOR A SECOND CAUSE OF ACTION

12. Plaintiff hereby repeats and reiterates each and every allegation contained in paragraphs "1" through "11" as if more fully set forth herein.

13. Defendants performed a procedure on the plaintiff without advising him of the risks inherent in the procedure.

14. As a result of defendants performing a procedure on plaintiff without obtaining his informed consent, plaintiff sustained injuries and will continue to sustain injuries in the future.

15. As a result of the aforesaid, plaintiff has been damaged in the amount of \$1,000,000.00.

AS AND FOR A THIRD CAUSE OF ACTION

16. Plaintiff hereby repeats and reiterates each and every allegation contained in paragraphs "1" through "15" as if more fully set forth herein.

17. At all times hereinafter mentioned, plaintiff EILEEN KELLY-CARBONE was and still is the lawfully wedded wife of plaintiff, RICHARD CARBONE.

18. As a result of the aforesaid, plaintiff EILEEN KELLY-CARBONE, has been deprived of the services, society and companionship of plaintiff, RICHARD CARBONE.

19. As a result of the aforesaid, plaintiff EILEEN KELLY-CARBONE has been damaged in the sum of \$250,000.

WHEREFORE, plaintiffs seek judgment against the defendants on the First and Second Causes of Action in a sum in excess of the monetary limits of all lower courts and on the Third Cause of Action in the sum of \$250,000.

Dated: New York, New York
September 4, 2007

Yours, etc.,

ROBERT G. SPEVACK, ESQ.
Attorney for PLAINTIFFS
150 Broadway, 20th Floor
New York, New York 10038
(212) 587-9663

STATE OF NEW YORK)
)ss:
COUNTY OF NEW YORK)

The undersigned, an attorney duly admitted to practice law in the Court of New York State, shows:

Deponent is **ROBERT G. SPEVACK**, the attorney of record for **the plaintiffs, RICHARD CARBONE and EILEEN KELLY-CARBONE**, in the within action. Deponent has read the foregoing **COMPLAINT** and knows the contents thereof. The same is true to deponent's own knowledge, except as to the matters herein stated to be alleged on information and belief; and as to those matters deponent believes them to be true. This verification is made by deponent and not by said plaintiffs as they do not reside in the County wherein your deponent's office is located.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: Investigations made on behalf of said plaintiffs.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York
September 4, 2007

ROBERT G. SPEVACK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD CARBONE and EILEEN KELLY-CARBONE,

**AFFIDAVIT
OF MERIT**

Plaintiffs,

INDEX NO.:

-against-

NEW MILFORD HOSPITAL and JOHN MULLEN, M.D.,

Defendants.

-----X

ROBERT G. SPEVACK, ESQ. being an attorney duly licensed to practice law in the Court of the State, hereby affirms the following to be true:

1. I am the attorney for the plaintiff in the above captioned matter, and as such am fully familiar with the facts and circumstances surrounding the instant action.
2. I have received the facts of this case, and have consulted with a physician, who is licensed to practice in this State, and who I reasonably believe is knowledgeable in the relevant issues involved in this action.
3. I have concluded on the basis of such review and consultation, that there is a reasonable basis for the commencement of this action.

Dated: New York, New York
 September 4, 2007

Respectfully submitted,

ROBERT G. SPEVACK